

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION**

**DAVID EARL LYONS**

**PETITIONER**

**v.**

**No. 1:16CV143-SA-DAS**

**MARSHALL FISHER, ET AL.**

**RESPONDENTS**

**CERTIFICATE OF APPEALABILITY**

A final order having been issued in either a *habeas corpus* proceeding in which the detention complained of arises out of process issued by a state court under 28 U.S.C. § 2254 or § 2241 or in a proceeding under 28 U.S.C. § 2255, the Court, considering the record in the case and the requirements of Fed. R. App. P. 22(b) and 28 U.S.C. § 2253(c), hereby finds that

**PART A**

☐ The applicant has made a substantial showing of the denial of a constitutional right.

**SPECIFIC ISSUE(S):**

☒ **A certificate of appealability should not issue.**

**REASONS FOR DENIAL:**

For the reasons stated in the opinion, the court finds that the Petitioner has failed to “demonstrate that the issues are debatable among jurists of reason; that a court could resolve issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further.”

[Barefoot v. Estelle, 463 U.S. 880, 893 n.4, 103 S.Ct. 3383, 3394 n.4, 77 L.Ed.2d 1090 \(1993\)](#)

(superseded by statute) (citations and quotations omitted); [28 U.S.C. § 2253\(1\)](#) and (2). Specifically, the court finds, for the reasons set forth in its, memorandum opinion and final judgment, that the instant petition for a writ of *habeas corpus* should be dismissed for failure to exhaust state remedies.

**PART B (if applicable)**

☐ The party appealing is entitled to proceed *in forma pauperis*.

☒ **The party appealing is not entitled to proceed *in forma pauperis*.**

**REASONS FOR DENIAL:**

The Court finds that the Petitioner's appeal is not taken in good faith because it is frivolous and has no possibility of success. *See* [Fed. R. App. P. 24](#).

**SO ORDERED**, this, the 4th day of August, 2017.

/s/ Sharion Aycock  
**U. S. DISTRICT JUDGE**